



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MICHAEL D. TAYLOR,  
Petitioner,  
v.  
J. TIM OCHOA, WARDEN,  
Respondent.

Case No. CV 12-9488-GAF (MLG)  
ORDER DENYING CERTIFICATE OF  
APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts requires the district court to issue or deny a certificate of appealability ("COA") when it enters a final order adverse to the petitioner. Because jurists of reason would not find it debatable whether this Court was correct in its ruling denying the petition, a COA is denied.

Before a petitioner may appeal the Court's decision denying his petition, a COA must issue. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b). The Court must either issue a COA indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App.P. 22(b).

1 The court determines whether to issue or deny a COA pursuant to  
2 standards established in *Miller-El v. Cockrell*, 537 U.S. 322 (2003);  
3 *Slack v. McDaniel*, 529 U.S. 473 (2000); and 28 U.S.C. § 2253(c). A COA  
4 may be issued only where there has been a "substantial showing of the  
5 denial of a constitutional right." 28 U.S.C. § 2253 (c)(2); *Miller-El*,  
6 537 U.S. at 330. As part of that analysis, the Court must determine  
7 whether "reasonable jurists would find the district court's assessment  
8 of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at  
9 484, *See also Miller-El*, 537 U.S. at 338.

10 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the  
11 court noted that this amounts to a "modest standard". (Quoting  
12 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). Indeed,  
13 the standard for granting a COA has been characterized as "relatively  
14 low". *Beardlee v. Brown*, 393 F.3d 899, 901 (9th Cir. 2004). A COA  
15 should issue when the claims presented are "adequate to deserve  
16 encouragement to proceed further." *Slack*, 529 U.S. at 483-84,  
17 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); *see also*  
18 *Silva*, 279 F.3d at 833. If reasonable jurists could "debate" whether  
19 the petition could be resolved in a different manner, then the COA  
20 should issue. *Miller-El*, 537 U.S. at 330.

21 Under this standard of review, a COA will be denied. In denying  
22 the petition for writ of habeas corpus, the Court concluded, for the  
23 reasons stated in the Magistrate Judge's Report and Recommendation,  
24 that Petitioner had failed to state a cognizable claim for habeas  
25 corpus relief because the failure of the California Board of Parole  
26 Hearings to set a maximum term and a parole release date prior to  
27 determining suitability for parole does not implicate federal due  
28 process rights. Petitioner cannot make a colorable claim that jurists

1 of reason would find debatable or wrong the decision denying the  
2 petition. Thus, Petitioner is not entitled to a COA.

3 Therefore, pursuant to 28 U.S.C. § 2253, the Court DENIES a  
4 certificate of appealability.

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6 Dated: December 4, 2012



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Gary A. Fees  
United States District Judge

Presented By:



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Marc L. Goldman  
United States Magistrate Judge